

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

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IN THE MATTER OF:

**APPLICATION OF EAST KENTUCKY POWER COOPERATIVE, INC.)
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY) CASE NO.
FOR THE CONSTRUCTION OF A 161kV ELECTRIC TRANSMISSION) 2005-00207
PROJECT IN BARREN, WARREN, BUTLER, AND OHIO COUNTIES, KY)**

**DIRECT TESTIMONY OF INTERVENOR
JOEY ROBERTS**

My name is Joey Roberts, and I'm a citizen and taxpayer of the Commonwealth of Kentucky concerned about proper governmental oversight of decisions which impact a broad spectrum of public interests, not the least of which is minimizing the costs to society for provision of necessary utilities. I'm a resident and property owner in Warren County, Kentucky. My address is 4234 Scottsville Road, Smiths Grove, Kentucky 42171. My wife and I rely on Warren Rural Electric Cooperative Corporation (WRECC) for electricity at our home. As a "member-owner" of that "Cooperative", I've been very discouraged to learn that I have no true voice in the decisions made by this private cooperation, nor do I have any right under current Kentucky statutes to obtain information from them specific to this particular issue.

Thus I have been forced to exercise my rights under Kentucky statutes and administrative regulations by requesting that Kentucky's Public Service Commission (PSC) grant me status as an "Intervenor" in these proceedings. I am acting as an individual citizen without any professional legal counsel, and I represent no incorporated entities or other organized groups in this matter. However, I believe that I share the concerns of many other property owners that would be directly affected by the proposed project.

While the many potential negative impacts of high-voltage electric power transmission lines upon human health continue to be the subject of scientific debate, there can be no doubt that there is a perception among the public-at-large that living near such high capacity power lines is undesirable. This commonly held perspective represents a very real impairment to property values in the case of residential use that would remain uncompensated even in the event of purchase of new right-of-way. In my situation, the proposed replacement of an existing 69kV line on wooden poles with new 161kV lines on much taller steel poles would certainly not go unnoticed by prospective buyers.

I join with many other affected property owners in questioning the propriety of allowing the Applicant to designate preferred alternative routes for the proposed power lines without completing the federally mandated environmental assessment process. While I understand the cost advantages that may accrue from utilization of existing "right-of-ways" to the extent possible, I must point out that existing routes were not subjected to the same protocols that we operate under today. Thus the matrix of alternatives to be examined must include new routes that reduce the inevitable negative consequences.

For example, one of the alternative routes developed for "Segment 1 – Barren County to Oakland to Magna" of the proposed transmission line was a shorter more direct path that ran along I-65 much of the way. This alternative was apparently eliminated not only because of the expense of obtaining new right-of-way but also due to perceived negative "visual impacts". Given the preponderance of billboards, other commercial and informational signage, cell phone towers, and the 6-lane roadway itself along this section of interstate highway, it is a bit hard to imagine that the power line alone would actually create a significant visual impact along that possible route.

In this instance, there appears to be no comparable analysis of the property value impairments caused by constructing a higher capacity line along the path of the existing WRECC line to the Park City substation, not to mention the visual impacts of such a line running through the backyards of existing homeowners like myself. Thus there are situations in which a new route could be much more desirable than simply following the presumed least cost alternative of an existing right-of-way.

Rather than reiterate all the objections of others to the faulty and incomplete environmental impact evaluation performed by the Applicant, it should suffice to say that the Application submitted to the PSC fails to justify the proposed project according to any legitimate "cost-benefit" analysis. Therefore, as an Intervenor in this case before the Commission, I am compelled to request that the Certificate of Public Convenience and Necessity be denied under the legal standards of KRS 278.020(2) and (8) due to the lack of an adequate examination of alternatives of potentially less landowner and environmental impact taken as a whole.

In fact, there appears to have been no realistic evaluation of the "no-build" or status quo alternative, which should always be considered. When hundreds of property owners are negatively impacted by the proposed alternative and the reliable electric supply to which approximately 55,000 customers of WRECC have become accustomed is jeopardized, it is simply not good enough to be told "take our word for it" and "we have already signed a contract". It is incumbent upon the Commission to require the Applicant to satisfy the burden of proof that a real public necessity and convenience is served by the proposed project and that all viable alternatives have been given due consideration. Further elaboration of my contention requires some review of the history of this case.

In March 2003, the WRECC Board of Directors voted to submit the stipulated "five-year notice" of plans to terminate their 61-year relationship with the Tennessee Valley Authority (TVA). WRECC is an electric power distribution cooperative with headquarters in Bowling Green that serves approximately 55,000 customers in parts of eight counties in South Central Kentucky. On May 27, 2004 the WRECC Board signed a "Wholesale Power Agreement" with East Kentucky Power Cooperative, Inc. (EKPC) as their new sole source power provider under a 33-year contract to become effective on April 1, 2008. EKPC (based in Winchester, KY) provides wholesale energy and transmission services to sixteen member cooperatives, which together comprise a marketing coalition known as "Kentucky's Touchstone Energy Cooperatives".

On June 13, 2005, the Kentucky Public Service Commission conducted an "evidentiary hearing" on an application filed by EKPC for a "Certificate of Public Convenience and Necessity" and a "Site Compatibility Certificate" for a 278 MW circulating fluidized bed coal-fired electric power generation unit in Mason County, Kentucky (PSC Case No. 2004-00423) at their offices in Frankfort. This hearing failed to acknowledge the reality of the situation that there had been no public review of the underlying assumptions upon which WRECC based its decision to leave TVA and contract with EKPC. This contract was relied upon by EKPC as the primary justification for its claim of public convenience and necessity for the new "Spurlock Unit #4" power plant.

On July 1, 2005, EKPC filed an application with the PSC for a "Certificate of Public Convenience and Necessity" for the construction of a 161 kV electric power transmission line in Barren, Warren, Butler, and Ohio Counties, Kentucky (PSC Case No. 2005-00207). Once again EKPC has relied upon the "Wholesale Power Agreement" with WRECC as the basis for this application.

East Kentucky Power Cooperative first notified me in May 2005 that they might be constructing the proposed electric transmission line across my property and might require additional right-of-way beyond that already in possession of WRECC. This could ultimately result in my residence being taken under the assumed authority of "imminent domain". However, my primary interest extends well beyond my personal concerns to the essence of the decision making process and the proper implementation of regulatory authority in order to ensure that the ultimate outcome is actually in the best interest of the general public. That is very unlikely to be the case when decisions are made behind closed doors and then simply announced as a "done deal".

WRECC has acted with no outside review whatsoever to obligate its members under a 33-year contract to pay EKPC wholesale rates for electric power that include the amortized costs of new power production facilities and transmission lines in addition to all related costs of power generation by EKPC or purchase from other suppliers. Neither WRECC nor EKPC have revealed the actual rates that WRECC customers will be required to pay for electricity under that contract. The WRECC Board made this decision in a closed session, never conducted a public hearing or meeting on this issue, and has refused to provide copies of the responses to its Request for Proposals or the subsequent rate analysis conducted by consultants working under its direction.

Both WRECC and EKPC appear to be taking advantage of a glaring defect in the regulatory system under which they operate as "private corporations" with no obligation to comply with Kentucky's "open meetings" and "open records" statutes, yet they both claim the ability to appropriate the "eminent domain" powers of the Commonwealth to take property for their use whenever they deem such acquisitions necessary for their purposes. In addition, WRECC has avoided any PSC review of its decision to impose a new indebtedness of over \$500 million (for the proposed EKPC power plant and transmission line) upon all WRECC customers under a "blanket exemption" from state regulation by virtue of its status as part of the TVA system. However, it is obvious that TVA exercises no regulatory authority over WRECC's decision to leave TVA and join EKPC under the "Special Membership Agreement" that has already been signed.

Current PSC interpretation of its enabling statutes and regulations allowing for the exemption of WRECC's actions from PSC purview as long as WRECC remains part of the TVA system, regardless of stated future intentions, may not stand up to future judicial review. This construal leaves the membership of WRECC and the public at large with no protection from decisions being made by WRECC, which may ultimately place what has been a reliable and relatively low cost source of electric power from TVA in serious jeopardy. Area taxpayers are already heavily invested in the TVA infrastructure, which must continue to be supported and maintained even if not being utilized to the full extent of its rated capacity. Therefore abandonment of TVA by traditional major wholesale purchasing partners such as WRECC could cause costly inefficiencies in the electric power generation system and negatively impact our national interests.

Some contend that a recent order from the Federal Energy Regulatory Commission (FERC) requiring TVA to allow EKPC to "interconnect" with its transmission system would ease the transition and eliminate the necessity for some of the new transmission lines. However, there is no good reason for TVA to facilitate its own demise by sharing transmission lines of limited capacity with an entity seeking to "cherry-pick" one of their large distributors, and there is no guarantee that EKPC would not later decide to construct its own lines to accommodate its admitted needs for "peak-load" and reliability back-up from the Big Rivers Cooperative "Wilson Plant" in Ohio County or other power brokers on the spot market. In fact, EKPC itself has stated in response to data requests

in this case that all the proposed transmission lines are required in addition to and regardless of suggested “interconnections”.

Additional troubling questions are raised in the “Technical Appraisal” produced by ICF Resources, LLC. ICF Consulting, which was retained by the PSC to review EKPC’s Application, states that unacceptable overloads might occur at some interconnection points and that the ability of EKPC’s planned power generation capacity to meet WRECC’s projected load demands appears questionable.

Claims that EKPC can provide the reliable supply of all WRECC needs for electric power at costs to WRECC member ratepayers that are substantially less than would be the case under TVA over the long term remain unsubstantiated. The fact that Bowling Green Municipal Utilities (BGMU) performed a very thorough evaluation of all its options and then chose to rescind its notice of TVA contract termination raises serious doubts that WRECC has made a decision truly in the best interests of all its members. Since WRECC members had no voice in that decision, it would seem fitting for Kentucky statutes to require some regulatory agency review in such situations. Perhaps the “intent” of the law is more important than the “letter” of the law in this case?

Given the capability and willingness of TVA to continue to provide all the power needs of WRECC, the PSC should evaluate the basis for a presumption that retail rates for electricity within the WRECC service area would be less under their plan to obtain power from EKPC rather than TVA in order to fulfill the PSC’s admitted obligation to avoid duplication of facilities. Under present day market operations and electric power grid interconnectivity, the PSC cannot ignore existing generation and transmission capacity that crosses state lines without being in jeopardy of facilitating needless irretrievable commitments of resources, wasteful duplication of expensive power production facilities, and foreclosure of better options. Everyone suffers from governmental decisions that culminate in institutional inefficiencies. It is critical in today’s environment that we look at the big picture to protect our national security.

The reality of present circumstances is that the PSC cannot perform its statutory obligation to represent the interests of the general public and make an adequate determination of the “public convenience and necessity” of the subject application from EKPC in the absence of a full public review of the rate projections provided by EKPC upon which WRECC based its decision to terminate its contract with TVA. Since the TVA has had no real jurisdictional authority over any of these plans, WRECC would be allowed to operate with impunity during this transitional period with no regulatory oversight whatsoever unless the PSC implements appropriate supervision.

Hundreds of rural property owners may find themselves subject to takings proceedings under Kentucky statutes that permit utilities to exploit powers of "eminent domain" to obtain necessary right-of way for power lines. Over 1,000 acres of precious prime farmland might be impacted by proposed right-of way acquisitions. One has to wonder if partisan political shenanigans to shift coal purchases to favored companies and other illegitimate preferential treatment may be the real motivation behind the planned transfer of WRECC business to EKPC. Unfortunately, the truth remains cloaked behind a veil of secrecy.

Respectfully submitted by,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Direct Testimony of Intervenor Joey Roberts** in the matter of **PSC CASE NUMBER 2005-00207** was duly served by direct delivery in person, electronic facsimile and/or mailing first-class postage prepaid to the following individuals this **6th day of September, 2005**:

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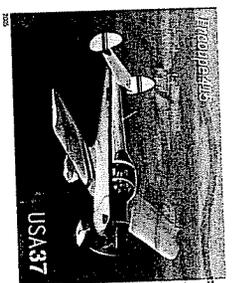

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